



August 27, 2002

Chief Don Hatcher
Leander Police Department
P.O. Box 319
Leander, Texas 78646-0319

OR2002-4772

Dear Chief Hatcher:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 167714.

The Leander Police Department (the “department”) received a request for “any [and] all reports, informationals [sic], affidavits and calls to service” involving two named individuals and a street address. The department states that it has released some of the requested information. The department claims that the remaining requested information is excepted from disclosure under sections 552.101 and 552.108 of the Government Code. We have considered the exception you raise and have reviewed the information you submitted.

First, we must address the request for “any [and] all” records that relate to the two named individuals. Section 552.101 of the Government Code excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” This exception encompasses the common-law right to privacy. Common-law privacy protects information that is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). When a law enforcement agency is asked to compile criminal history information regarding a specific individual, the compiled information takes on a character that implicates the individual’s right to privacy in a manner that the same information in an uncompiled state does not. *See United States Dep’t of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989); *see also* Open Records Decision No. 616 at 2-3 (1993).

This request, in part, is for unspecified law enforcement records that pertain to the two named individuals. That aspect of this request for information implicates these individuals’ privacy rights. Therefore, to the extent that the department maintains any information that

depicts either of the named individuals as a suspect, arrestee, or defendant, all such information must be withheld from disclosure under section 552.101 of the Government Code in conjunction with *Reporters Committee*.

Section 552.101 also encompasses information that another statute makes confidential. The department claims that some of the requested information is confidential under section 261.201 of the Family Code. Section 261.201 provides in relevant part:

(a) The following information is confidential, is not subject to public release under Chapter 552, Government Code, and may be disclosed only for purposes consistent with this code and applicable federal or state law or under rules adopted by an investigating agency:

(1) a report of alleged or suspected abuse or neglect made under this chapter and the identity of the person making the report; and

(2) except as otherwise provided in this section, the files, reports, records, communications, audiotapes, videotapes, and working papers used or developed in an investigation under this chapter or in providing services as a result of an investigation.

Fam. Code § 261.201(a). We agree that the information relating to case number 210901 consists of files, reports, records, communications, and working papers used or developed in an investigation made under chapter 261 of the Family Code. *See also* Open Records Decision No. 440 at 2 (1986) (construing predecessor statute). The department does not inform this office that it has any regulations that would allow the release of this information to this requestor. Thus, we assume that no such regulation exists. We therefore conclude that the information relating to case number 210901 is excepted from disclosure in its entirety under section 552.101 of the Government Code in conjunction with section 261.201 of the Family Code.¹

The submitted records also include information that is made confidential under section 58.007 of the Family Code. Section 58.007 provides in part:

(c) Except as provided by Subsection (d), law enforcement records and files concerning a child and information stored, by electronic means or otherwise, concerning the child from which a record or file could be generated may not be disclosed to the public and shall be:

¹We note that a parent or other legal representative of a victim of alleged child abuse or neglect may be entitled to obtain portions of the requested information from the Texas Department of Protective and Regulatory Services. *See* Fam. Code § 261.201(g).

- (1) if maintained on paper or microfilm, kept separate from adult files and records;
- (2) if maintained electronically in the same computer system as records or files relating to adults, be accessible under controls that are separate and distinct from controls to access electronic data concerning adults; and
- (3) maintained on a local basis only and not sent to a central state or federal depository, except as provided by Subchapter B.

Fam. Code § 58.007(c). Section 58.007(c) is applicable to records of juvenile conduct that occurred on or after September 1, 1997. *See* Act of June 2, 1997, 75th Leg., R.S., ch. 1086, §§ 20, 55(a), 1997 Tex. Gen. Laws 4179, 4187, 4199; Open Records Decision No. 644 (1996). The juvenile must have been at least 10 years old and less than 17 years of age when the conduct occurred. *See* Fam. Code § 51.02(2) (defining “child” for purposes of title 3 of Family Code). In this instance, the report in case number 210984 is confidential under section 58.007 of the Family Code. Therefore, this report also is excepted from disclosure under section 552.101 of the Government Code.

The department also raises section 552.108. Section 552.108(a)(1) excepts from disclosure “[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime . . . if . . . release of the information would interfere with the detection, investigation, or prosecution of crime[.]” A governmental body that raises section 552.108 must reasonably explain, if the requested information does not supply an explanation on its face, how and why section 552.108 is applicable to that information. *See* Gov’t Code § 552.301(e)(1)(A); *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977); Open Records Decision No. 434 at 2-3 (1986).

The department indicates that the report in case number 220075 relates to a pending case. However, the report itself reflects that the department cleared the case as being unfounded. Thus, we find that the department has not demonstrated that the release of this report would interfere with the detection, investigation, or prosecution of crime. *See Houston Chronicle Publ’g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref’d n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976) (court delineates law enforcement interests that are present in active cases). Therefore, the report in case number 220075 is not excepted from disclosure under section 552.108(a)(1).

We note, however, that this report contains the driver’s license numbers of two individuals. Section 552.130 of the Government Code excepts from disclosure information that relates to “a motor vehicle operator’s or driver’s license or permit issued by an agency of this state[.]” Gov’t Code § 552.130(a)(1). A Texas driver’s license number must be withheld from public disclosure under section 552.130. In this instance, one of the driver’s license

numbers is that of the requestor. The requestor has a special right of access to his own driver's license number. *See* Gov't Code § 552.023.² Information to which the requestor has a right of access under section 552.023 may not be withheld from him under section 552.130. If the driver's license number that we have marked is a Texas driver's license number, then it is excepted from disclosure under section 552.130.

In summary, any law enforcement records held by the department that depict either of the two named individuals as a suspect, arrestee, or defendant are protected by privacy under *Reporters Committee* and must be withheld from disclosure under section 552.101 of the Government Code. The information that relates to case number 210901 is excepted from disclosure under section 552.101 in conjunction with section 261.201 of the Family Code. The report in case number 210984 is excepted from disclosure under section 552.101 in conjunction with section 58.007 of the Family Code. One of the driver's license numbers in report number 220075 is excepted from disclosure under section 552.130 of the Government Code if it is a Texas driver's license number. The department must release the rest of the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records

²Section 552.023(a) provides that "[a] person or a person's authorized representative has a special right of access, beyond the right of the general public, to information held by a governmental body that relates to the person and that is protected from public disclosure by laws intended to protect that person's privacy interests." *See also* Open Records Decision No. 481 at 4 (1987) (privacy theories not implicated when individual asks governmental body to provide him with information concerning himself).

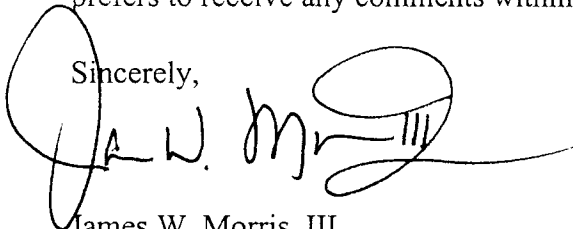
will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a large, stylized flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 167714

Enc: Marked documents

c: Mr. W.L. Chabert II
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Elgin, Texas 78621
(w/o enclosures)